

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Emma Ferrell, Trustee for the Next-of-Kin
of Cortney Ferrell, deceased,

Court File No.

Plaintiff,

NOTICE OF REMOVAL

v.

Waste Management Disposal Services of
Colorado, Inc. and Dwight Emery
Esquibel,

Defendants.

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, Defendants Waste Management Disposal Services of Colorado, Inc. (WM of Colorado) and Dwight Emery Esquibel (Esquibel) (collectively, Defendants) hereby remove the above-captioned action from the District Court for the Second Judicial District for the State of Minnesota, Ramsey County, to the United States District Court for the District of Minnesota. Removal to this Court is proper on the basis of diversity jurisdiction pursuant to 28 U.S.C. § 1332(a). In support of this Notice of Removal, Defendants state as follows:

THE STATE COURT ACTION

1. Plaintiff Emma Ferrell, Trustee for the Next-of-Kin of Cortney Ferrell, deceased (Plaintiff) commenced this action in the District Court for the Second Judicial District for the State of Minnesota, Ramsey County (State Court Action) by serving a Summons and Complaint (Complaint) on WM of Colorado and Esquibel on or around June 6, 2022, which was subsequently amended and served on WM of Colorado on or around

June 17, 2022 (Amended Complaint). Counsel for WM of Colorado and Esquibel accepted service of the Amended Complaint via email on June 17, 2022. Attached hereto as Exhibit A is a copy of the Summons and Complaint and attached hereto as Exhibit B is a copy of the Amended Summons and Amended Complaint. A search of the Second District docket shows that the Amended Complaint has not yet been filed with the that court. Notwithstanding that fact, Defendants are still entitled to remove the State Court Action.

2. The Complaint asserts a claim for negligence against Defendants resulting in wrongful death. Ex. A ¶¶ II-III, V-VI. Plaintiff seeks unspecified damages, "in an amount greater than Fifty Thousand and no/100 (\$50,000) Dollars" with "interest, costs and disbursements." *Id.* ¶ VI, *wherefore* clause.

3. Defendants are contemporaneously serving and filing their Verified Joint Answer to Plaintiff's Amended Complaint with the United States District Court for the District of Minnesota. Attached hereto as Exhibit C is a copy of the Verified Joint Answer.

4. This Notice of Removal is filed pursuant to 28 U.S.C. §§ 1332, 1441, and 1446 which provide for removal of any civil action in which the United States District Court has original jurisdiction. Removal of this action to the United States District Court for the District of Minnesota is proper based on diversity jurisdiction under 28 U.S.C. § 1332.

CITIZENSHIP OF THE PARTIES

5. Plaintiff is a citizen of the State of Minnesota. Plaintiff is a resident of the State of Minnesota, and upon information and belief has an intent to remain in Minnesota indefinitely. Attached hereto as Exhibit D is a copy of Plaintiff's February 15, 2021

Petition for Appointment of Trustee identifying Plaintiff's address as "7106 Quail Avenue NE, Otsego, MN 55330" at paragraph 3.

6. Defendant WM of Colorado is a corporation formed under the law of Colorado, with its principal place of business in Houston, Texas. Thus, WM of Colorado is a citizen of Colorado and Texas.

7. Defendant Esquibel is a citizen and resident of the State of Colorado.

DIVERSITY OF CITIZENSHIP

8. This Court's jurisdiction must be assessed by examining the Amended Complaint on its face as of the time of filing of this Notice of Removal. *See Wis. Dept of Corr. v. Schact*, 524 U.S. 381, 390 (1998) ("[F]or purposes of removal jurisdiction, we are to look at the case at the time it was filed in state court.") (citing *St. Paul Mercury Indem. Co. v. Red Cab. Co.*, 303 U.S. 283, 291 (1938) ("[T]he status of the case disclosed by the plaintiff's complaint is controlling in the case of removal. . . .")); *McLain v. Andersen Corp.*, 567 F.3d 956, 965 (8th Cir. 2009).

9. This Court has diversity jurisdiction under 28 U.S.C. § 1332(a) because this action is between citizens of different states and the amount in controversy exceeds \$75,000.

PROCEDURAL REQUIREMENTS FOR REMOVAL

10. Removal to Proper Court. Pursuant to 28 U.S.C. § 1441(a) and 1446(a), this Notice of Removal is being filed in the United States District Court for the District of Minnesota, which is the federal district court embracing the court where the State Court Action was filed.

11. Removal is Timely. The original Complaint in the State Court Action was received by accepted email service upon WM of Colorado on June 6, 2022. Because thirty days has not yet elapsed since service on WM of Colorado, this Notice of Removal is timely filed with the United States District Court for the District of Minnesota. 28 U.S.C. § 1446(b).

12. Pleadings and Process. A copy of all process, pleadings, and orders served upon Defendants are attached hereto as Exhibits A-C. 28 U.S.C. § 1446(a). No other papers or pleadings have been filed or served in the State Court Action. Defendants paid the appropriate filing fee to the Clerk of this Court upon filing this Notice of Removal.

13. Notice. Defendants will file, with the Court Administrator for the Ramsey County District Court, and serve on Plaintiff, a Notice of Filing of Notice of Removal pursuant to 28 U.S.C. § 1446(d).

14. No previous Notice of Removal has been filed in or made to this Court for the relief sought herein.

15. Defendants reserve the right to amend or supplement this Notice of Removal.

16. Defendants reserve all defenses including, without limitation, those affirmative defenses set forth in Fed. R. Civ. P. 12.

17. Based upon the foregoing, this Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332.

REQUEST FOR ADDITIONAL ARGUMENTS AND EVIDENCE

18. In the event that Plaintiff seeks to remand this case, or the Court considers remand *sua sponte*, Defendants respectfully request the opportunity to submit such additional argument or evidence in support of removal as may be necessary.

WHEREFORE, without waiving any defenses under federal or state law, rules or procedures, including without limitation those defenses set forth in Fed. R. Civ. P. 12(b), Defendants hereby remove this action to the United States District Court for the District of Minnesota.

DATED: July 1, 2022

**TAFT STETTINIUS & HOLLISTER
LLP**

By: /s/ Thomas J. Basting, Jr.

Thomas J. Basting, Jr. (#01020231)

Brayanna J. Bergstrom (#0401770)

2200 IDS Center

80 South Eighth Street

Minneapolis, MN 55402-2157

Telephone: (612) 977-8400

Fax: (612) 977-8650

Email: tbasting@taftlaw.com

bbergstrom@taftlaw.com

MCCOLLUM CROWLEY

By: /s/ Jacob M. Tomczik

Jacob M. Tomczik (#0325375)

7900 Xerxes Avenue South, Suite 700

Bloomington, MN 55431

Telephone: (952) 345-9752

Email: jmt@mccollumlaw.com

**ATTORNEYS FOR DEFENDANTS
WASTE MANAGEMENT DISPOSAL
SERVICES OF COLORADO, INC. AND
DWIGHT EMERY ESQUIBEL**